plaintiff arising from his being a prisoner. As against this, the plaintiff had been a prisoner since 1961 and the disease only set in about September 1965 soon after the accident. In our opinion there was ample material to justify the trial judge's finding on this issue. The trial judge, however, found no positive evidence that the disease had spread to the lower limbs and accordingly proceeded to assess damages on that basis. Although the plaintiff said he had worked as a blacksmith, he had prior to his imprisonment been working as a bar waiter. He was about 39 years of age when damages were assessed. It was then clear that he would be unable to do heavy manual work but the trial judge found that he could, bearing in mind that he was an ex-prisoner, probably be able to obtain some form of employment of a lighter nature for a period of 10 working years and not more. We cannot disagree with this assessment of his working potential or with the finding that his earning capacity would have been reduced by about $100 per month from his previous earnings of $200 per month as a waiter. We would therefore confirm the award of $14,000 as general damages being as to $9,000 in respect of loss of earnings and $5,000 for pain and suffering and loss of amenities of life. We would also confirm the award of $600 as special damages for loss of earnings before the trial.

The appeal partly succeeds, as indicated earlier, and we would award the appellant three-quarters of his taxed costs of this appeal.

Appeal partly allowed.

Solicitors: *Williams & Co.*

PUBLIC PROSECUTOR v. WINSTON CHUNG YIN CHEN

[A.Cr.J. (Ibrahim J.) February 23, 1969]
[Malacca — Criminal Appeal No. 53 of 1967]

Advocates and Solicitors — Suing out process — Writ of summons signed in the name of firm of solicitors by firm employee not being a practitioner — Whether acting as an advocate and solicitor — Advocates and Solicitors Ordinance, 1947, s. 57(1)(a).

This was an appeal against the acquittal and discharge of the respondent on charges under section 57 (1) (a) of the Advocates and Solicitors Ordinance, 1947, for acting as an advocate and solicitor by signing the name of his employers a firm of solicitors on two generally endorsed writs in two civil suits filed in the High Court.

The respondent was acquitted by the president of the Sessions Court on the grounds that it was the firm of solicitors which had authorised the issue of the two writs and it was the said firm which therefore sued out the writs. Further he held that it was impossible to say that the defendant was acting as a solicitor when he signed the two writs. On appeal,

Held, dismissing the appeal: (1) it was the firm of solicitors which were the respondent's employers that sued out the writs. Tht respondent had therefore not committed the two offences of which he was charged;

(2) the evidence produced by the prosecution did not show that the respondent was actually acting as an advocate and solicitor on his own behalf. When the respondent signed the name of the firm on the two writs he was not acting on his own behalf but on behalf of that firm. The respondent therefore had not acted as an advocate and solicitor under section 57(1)(a) of the Advocates and Solicitors Ordinance, 1947.

Cases referred to:—

(1) *Guthrie* v. *Fisk* 3 B.&.C. 183; 107 E.R. 700.

(2) *Dockings* v. *Vickery* (1882), 46 L.T.R. (N.S.) 139.

(3) *Law Society of the U.K.* v. *Waterlow Bros. etc.* (1883), 8 App. Cas. 407.

(4) *Abercombie* v. *Jordan* (1881), 8 Q.B.D. 187.

MAGISTRATE'S CRIMINAL APPEAL.

Ajaib Singh (Deputy Public Prosecutor) for the appellant.

Yong Pung-How for the respondent.

Ibrahim J.: The respondent was tried by the learned president on 3 charges under section 57(1)(a) of the Advocates and Solicitors Ordinance, 1947 which as finally amended read as follows:—

1. That you, on or about the 4th of November, 1965, in the State of Malacca, not being a practitioner, acting as an advocate and solicitor sued out a process, to wit, a Writ of Summons in Civil Suit No. 183/65 in the High Court, Seremban, in the name of Murphy & Dunbar and thereby committed an offence under section 57(1)(a) and punishable under section 57(1) of the Advocates and Solicitors Ordinance, 1947.

2. That you on or about the 24th day of February, 1966, in the State of Malacca, not being a practitioner, acting as an advocate and solicitor sued out a process, to wit, a Writ of Summons in Civil Suit No 16/66 in the High Court, Seremban, in the name of Murphy & Dunbar and thereby committed an offence under section 57(1)(a) and punishable under section 57(1) of the Advocates and Solicitors Ordinance, 1947.

3. That you on or about the 22nd day of June, 1965, in the State of Malacca, not being a practitioner, acting as an advocate and solicitor sued out a process, to wit, a Writ of Summons in Civil Suit No. 94/65 in the High Court, Malacca, in the name of Murphy & Dunbar and thereby committed an offence under section 57(1)(a) and punishable under section 57(1) of the Advocates and Solicitors Ordinance, 1947.

He was acquitted and discharged on all the three charges at the close of the case for the prosecution and this is an appeal by the public prosecutor against that acquittal and discharge. At the outset of the hearing of this appeal the appellant abandoned the appeal in respect of the third charge as the evidence disclosed that it was not the respondent but a partner of Messrs. Murphy & Dunbar who had signed the writ of

summons in Civil Suit No. 94 of 1965 (exh: P.5) in connection with that charge.

To establish the other two charges evidence was produced by the prosecution that the respondent was not a practitioner within the meaning of section 2 of the Advocates and Solicitors Ordinance, 1947 and that he had signed the name of Messrs. Murphy & Dunbar on the two generally endorsed writs of summons in Civil Suit Nos. 183 of 1965 and 16 of 1966 (exh: P.3 & P.4) which formed the subject-matter of the 1st and 2nd charges respectively.

O. 5 r. 12 of the Rules of the Supreme Court, 1957 requires that a signed copy of a writ of summons presented for sealing shall be left with a proper officer of the court and O. 3 r. 1 of the said Rules requires that:—

"The endorsement of claim shall be made on every writ of summons before it is issued and shall be signed by the plaintiff or his solicitor."

It was the prosecution's contention that a writ of summons must be signed personally by a solicitor and that by signing the firm's name on the two writs the respondent had sued them out is the name of Messrs. Murphy & Dunbar and that he was acting as an advocate and solicitor when he did that.

The learned president acquitted and discharged the respondent as he found that:—

(a) a writ of summons sued out by a solicitor may be signed by him personally or by someone authorised on his behalf and that constitutes sufficient compliance with O. 3 r. 1 of the Rules of the Supreme Court, 1957.

(b) The defendant did not sue out in the name of Messrs. Murphy & Dunbar the two writs in question. It was the firm of Messrs. Murphy & Dunbar that sued out the two writs.

(c) It is impossible to say the defendant was acting as an advocate and solicitor by virtue of the fact that he signed the two writs of summons in question.

For the disposal of this appeal it is not necessary for me to decide whether a writ of summons may be signed by a solicitor personally or by an unqualified person authorised on his behalf as I am of the opinion that in any event the respondent had not in this case sued out the two writs of summons in the High Court, Seremban or that he was acting as an advocate and solicitor by virtue of the fact that he signed Messrs. Murphy & Dunbar's name on the two writs.

What is the meaning of suing out a writ of summons in the High Court? To sue according to the *Shorter Oxford Dictionary* means to take legal action, to institute a legal process. Bayley J. in *Guthrie* v. *Fisk*,[1] said that "The expression 'to sue' generally speaking, means to bring actions." An action in the High Court is commenced by a writ of summons and before a writ of summons is issued out of the registry of the High Court a signed copy of the writ has to be presented at the registry for sealing and signature of the registrar and fees for the same have to be paid. To sue out or institute a writ of summons in the High Court must therefore mean more than just to sign it. In my opinion a writ of summons is not sued out or instituted in the High Court until all the requisite steps have been taken for its issuance out of the registry.

The evidence disclosed that on the dates relevant to the two charges the respondent was employed by Messrs. Murphy & Dunbar, a firm of advocates and solicitors, to take charge of the firm's Malacca branch office and that he had signed the two writs with the firm's authority on the firm's behalf. The two writs emanated from the firm's office as engrossed thereon and it is clear that the responsibility for their issuance rested with the firm. Though there is no direct evidence to that effect it may reasonably be inferred that the two writs were presented at the Seremban High Court Registry for their issuance by the firm. Fees for the same were paid by the firm. I am therefore of the opinion that it was Messrs. Murphy & Dunbar and not the respondent who had sued out the two writs. It may well be that a breach of the relevant Rules of the Supreme Court, 1957 had been committed by Messrs. Murphy & Dunbar in authorising the respondent to sign the two writs but that does not necessarily mean that the respondent had committed the two offences with which he was charged. He was charged not with signing but with suing out the two writs.

There is a similarity between the said section 57(1)(a) and section 2 of 6 & 7 Vict. c.73 which is enacted as follows:—

"From and after the passing of this Act no person shall act as an attorney or solicitor, or as such attorney or solicitor sue out any writ or process, or commence, carry on, solicit, or defend any action, suit, or other proceeding in the name of any other person or in his own name, in Her Majesty's High Court of Chancery or Courts of Queen's Bench, Common Pleas, or Exchequer, . . . unless such person shall . . . be admitted and enrolled and otherwise duly qualified to act as an attorney or solicitor, pursuant to the directions and regulations of this Act, and unless such person shall continue to be so duly qualified and on the roll at the time of his acting in the capacity of an attorney or solicitor as aforesaid."

By section 26 of the Solicitors Act 1860 (23 & 24 Vict. c.127) every person who acts as a solicitor contrary to the said section 2 shall be deemed to be guilty of a contempt of court and may be punished accordingly.

The question whether an unqualified person has acted as a solicitor or not under the said sections 2 and 26 was considered in a number of English cases. In *Dockings* v. *Vickery; Re Symons*,[2] a rule was obtained by the Incorporated Law Society calling upon Symons to

show cause why a writ of attachment should not issue against him for a contempt of court in having acted as a solicitor or as a solicitor having sued out a writ in the High Court of Justice in an action *Dockings* v. *Vickery,* without being duly qualified to act as a solicitor.

The brief facts of that case are that Symons who had been a clerk to a firm of solicitors for 20 years left their employment and had carried on the business of an accountant. Dockings called upon Symons and requested him to write to Vickery for payment of a sum of £20, money due to him upon a promissory note and in the event of the debt not being paid he was to instruct a solicitor to institute proceedings. Having failed to recover the money Symons sued out a writ in the District Registry at Barnstaple in an action of *Dockings* v. *Vickery.* It appeared upon the writ that it was issued by Charles Smalle, a solicitor of Bedford, in the County of Devon and the address for service was 115, Boutport-Street, Barnstaple, which was the address of Symons. Subsequently Smalle in his affidavit denied that he had been consulted by Symons prior to the issuing of the writ. It was not shown that Symons received any money for what he had done.

It was held that there was not sufficient evidence to show that he had put himself forward as actually acting as a solicitor and that on that ground alone the rule would be discharged upon his paying all the expenses.

Another case is the *Law Society of the United Kingdom* v. *Waterlow Brothers & Layton.*[3] Law stationers, not qualified as solicitors or proctors, were accustomed upon the instruction and in the names of London or county solicitors to take to the registry of the Probate Division original bills and the engrossments thereof, with the proper affidavits, and if these were in order to fetch away the probate; if any question arose as to the sufficiency of the documents the stationers communicated it to the solicitors. All the charges between solicitor and client were made by the solicitors and the stationers charged the solicitors for their clerk's time only.

It was held, affirming the decision of the Court of Appeal, that the stationers had not acted as solicitors or proctors, and were not liable to the penalties imposed by 23 & 24 Vict. c.127, section 26.

Lord Blackburn in the course of his judgment at page 417 said:—

> "I quite agree that if Messrs. Waterlow did this work upon payment from the ultimate client direct, if they were receiving a portion of the profits as partners, if they were in any way, by fraud or otherwise, acting in the name of Mr. Remington but really and truly for themselves, they would be within the enactment. On these admissions it is clear that they were doing nothing of the sort."

A case in which an unqualified person was held to have acted as a solicitor is *Abercombie* v. *Jordan, In Re Hunt,*[4] the headnote of which reads as follows:—

> "An unqualified person who acts as a solicitor commits an offence against 6 & 7 Vict. c.73, section 2 though he acts in the name and with the consent of a duly qualified solicitor."

In that case *H.*, who had carried on the business of an accountant, arranged with *C.*, who had been admitted as a solicitor, that he should use *H.*'s offices, and any business *H.* had he was to allow *C.* to attend to, *H.* to share the profits. Pursuant to this arrangement, *H.*, sometimes with *C.* and sometimes alone, transacted various matters which it was alone competent to a solicitor to transact, generally using the name of *C. & Co.*, but sometimes not, and not always with the knowledge or express sanction of *C.*

It was held by the Court of Appeal, affirming the Queen's Bench Division, that *H.* had been guilty of a contempt of court and that an attachment must issue against him.

At page 194 Cotton L.J. said:—

> "But it appears to me that section 2 applies not only to the case where an unqualified person acts without the consent of a qualified solicitor. but where he acts with such consent . . . The appellant did not pretend to act as managing clerk; he was acting on his own behalf, though he had made an arrangement that he should be at liberty to use the name of a duly qualified person."

It appears from those and others cases cited at the hearing of this appeal that an unqualified person acts as a solicitor within the meaning of the said section 2 when he actually acts as solicitor on his own behalf though with the consent and in the name of a duly qualified solicitor.

The evidence produced by the prosecution did not show that the respondent in this case was actually acting as an advocate and solicitor on his own behalf. The solicitors for the plaintiffs in the two civil suits were Messrs. Murphy & Dunbar and when he signed the firm's name on the two writs the respondent was acting not on his own behalf but on behalf of that firm. Thus even on the assumption that the two writs had been sued out by the respondent because he had signed them I am of the opinion that he had not acted as an advocate and solicitor within the meaning of the said section 57(1)(a) when he did that.

I therefore dismiss this appeal.

Appeal dismissed.

Solicitors: *Shook Lin & Bok.*